IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/11/2003

CORAM

THE HON'BLE MR.JUSTICE R.JAYASIMHA BABU
and
THE HON'BLE MR.JUSTICE S.R.SINGHARAVELU

T.C.No.141 of 2000

The Commissioner of Income Tax,
Tamilnadu III,
Madras. ..Petitioner

-Vs-

Smt.Surekha P.Kothari,
28,Kothari Road,
29,Madras-34. ..Respondents

Tax Case reference under Sec.256 (1) of the Income-tax Act, 1961,
against the order of the Income-tax Appellate Tribunal, 'B' Bench, Madras,
dated 9.02.1998, made in R.A.No.151/Mds of 1998 in ITA No.1892/ Mds/89.

!For petitioner : Mr.J.Narayanasamy,
Jr.Standing Counsel
for I.T. Department.

^For respondent : Mr.T.Vasudevan

:Order

(The order of the Court was made
by R.JAYASIMHA BABU, J.)

The assessment year is 1985-86. The questions referred for our consideration are:-
"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the foreign travel expenses incurred on behalf of the assessee by the company in which her husband is the Managing Director cannot be assessed in the hands of the assessee u/s 2 (24) (iv) of the Income-tax Act?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in cancelling the CIT's order u/s 263 dated 27.3.89 holding that the amount of Rs.53,487 being the foreign travel

expenses of the assessee met by M/s Kothari Industrial Corporation Ltd. Cannot be treated as perquisite in the hands of assessee?"

2. The assessee had accompanied her husband Mr.P.V.Kothari, who was the Managing Director of the company when he went to Europe and U.S. A. between 27.4.1984 and 7.6.1984. The expenditure incurred on her travel was paid by the company, Kothari Industrial Corporation Ltd., of which her husband was the Managing Director. The assessee herself has no official connection with the company except the fact that she was the wife of the Managing Director.

3. The Commissioner, exercising his revisional powers under Section 263 of the Act, directed the assessing officer, who had failed to assess this amount in the hands of the assessee to assess the amount of the benefit that the assessee had so received from that company, under Section 2 (24) (iv) of the Act. The Commissioner made that order after holding that the company could not produce any material to substantiate that the business affairs of the company were served in any manner by the assessee accompanying her husband on the foreign tour.

4. The Tribunal, to whom the assessee carried the matter in appeal, accepted the assessee's plea that it was customary in corporate circles for Directors and Senior Executives to take their spouse along with them when they undertake foreign travel. There was no proof of such custom produced before the Tribunal. As had been observed by the Commissioner, there is no material to show that the business affairs of the company were in any way served by the assessee accompanying her husband who was the Managing Director of the Company.

5. This Court in the case of Commissioner of Income Tax v. Sambandam Spinning Mills Pvt. Ltd. (263 ITR 115) has held that the travel expenditure of the wife of the Managing Director as also that of the Managing Director himself, both of whom had gone abroad for the medical treatment of the Managing Director, was not allowable as business expenditure as the company had incurred that expenditure outside it's contractual obligation to the Managing Director.

6. This Court had earlier, in the case of Commissioner of Income Tax vs. T.I.A.M. House Service Ltd. (243 ITR 695), disallowed similar expenditure.

7. In the two aforementioned decisions it was held that the payment that was made by the company was a gratuitous payment and could not be regarded as one having been made out of commercial expediency.

8. The situation here is similar. The assessee received a gratuitous payment from the company of which her husband was the Managing Director. The benefit so received, therefore, falls within the scope of Section 2 (24) (iv) of the Income Tax Act, which reads as under:-

"the value of any benefit or perquisite, whether convertible into

money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid."

Had the company not paid the expenses incurred on the assessee's tour abroad with her husband the amount would have been paid by the assessee herself or by her husband. It is not her case that her husband had met the expenses. The assessee having received a benefit from the company which had no obligation to provide such a benefit to her but had done so gratuitously, the value of the benefit so received by the assessee is required to be treated as part of her income.

9. Learned counsel for the assessee submitted that the Revenue had accepted the order of the Tribunal which had allowed this amount as a deduction in the assessment of the company. That however does not result in the Revenue being prevented from assessing that amount as income in the hands of the assessee, the Revenue not having realised any tax on that amount from the company.

10. The questions referred to us are, therefore, answered in favour of the Revenue and against the assessee.

Index: Yes
Website: Yes

To
1.The Assistant Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan,
III Floor, Besant Nagar,
Madras-90. (with records) (5 copies)

2.The Secretary,
Central Board of Revenue,
New Delhi. (3 copies)

3.The Commissioner of Income Tax,
Tamil Nadu-III, Madras.

4.The Asst. Commissioner of Income-tax,
Central Circle II (6),
Chennai.

5.The Commissioner of Income-tax,
Appeals-II, Madras.

6.The Income-tax Officer,
Central Circle XIII,
Madras.

7.The Commissioner of I.T.,
Central II, Madras.

Dev/